

## Colorado Oil and Gas Association

## HB 13-1316 – VOTE NO

Good afternoon. My name is Jamie Jost and I am a shareholder at the law firm of Beatty & Wozniak, P.C. I am here today on behalf of the Colorado Oil and Gas Association to OPPOSE House Bill 13-1316 and to support the Colorado Oil and Gas Conservation Commission' rulemaking process that resulted in a new groundwater sampling and monitoring program for the State of Colorado.

The rules were the outcome of several months of intense stakeholder meetings and commission hearings. Based on the testimony and written evidence and after a thoughtful deliberation, the COGCC unanimously enacted new Rule 609 and an important modification to the Greater Wattenberg Area Rule (GWA). The result – new or additional water sampling before and after drilling that allow the COGCC to monitor for potential changes in water quality over time. This water monitoring program supplements pre-existing water sampling requirements in the Greater Wattenberg Area and while preserving pre-existing water sampling requirements in the San Juan Basin, as well as for coalbed methane development statewide.

While water sampling and monitoring is an adjunct to COGCC Rules that address well integrity, spill avoidance and containment, and other requirements that directly protect groundwater.

COGA is opposed to HB 1316 for the following reasons:

1. It is unnecessary and fails to account for unique characteristics of specific areas of the state.
  - a. Consideration of these factors led the Commission, including the Director of the Department of Public Health and Environment, the Director of the Department of Natural Resources, and the Chairman of the Regional Air Quality Control Council to adopt the strongest water quality monitoring rule of any state. HB 1316 undermines that deliberative regulatory process.
  - b. A statewide "one size fits all" water sampling rule does not fit Colorado. It disregards existing groundwater sampling rules and orders that have been in-place for many years. For example, the data points required under HB 1316 are incompatible with the years of water quality data collected in the San Juan Basin, the most robust set of water quality data related to oil and gas development in the nation. The data show, by the way, that there has been no systemic groundwater impact from drilling and production in La Plata and Archuleta Counties.
  - c. Rule 608 has been implemented since 2000, and mandates sampling requirements specifically designed for coalbed methane development, especially in the Raton Basin.
  - d. Rule 318A.e(4). has been in-place since 2006 and mandates sampling requirements for all wells within the GWA. In addition to the new increased groundwater sampling requirements in GWA, any water well owner can (1) contact the COGCC and have their water well tested, and (2) if in Weld County, can contact the Weld County Department of Public Health and Environment and have their water well tested free of charge. This is a featured item on Weld County's website. Further, during the rulemakings, Weld County, where a majority of GWA wells are located, testified to

not wanting any revisions to the current Rule 318A.e.(4) water sampling program. Weld County stated that none of their constituents had requested more groundwater sampling and that the Weld County water testing program provided a tool for those who were curious about their water quality.

e. HB 1316 ignores this long history of groundwater sampling activity in Colorado.

2. Specifically focusing on the effect that HB 1316 will have on GWA, it is important to understand that Rule 318A.e(4) is not an exclusion from the new statewide sampling Rule 609. This GWA sampling rule has been in effect since 2006. It was modified during the just-concluded rulemaking in order to increase the amount of groundwater samples collected – by a factor of 4 – while acknowledging the unique and complex nature of the area.

a. The Commission has repeatedly recognized the need for unique regulatory treatment of GWA. Recognizing the significant economic benefits of GWA development, the long history and intense current investment in hydrocarbon development, the complex nature of the tight formations in the GWA, and the need to mitigate conflicts between mineral rights and surface interests, the Commission has promulgated predictable and protective rules unique to the area. The adoption of HB 1316 would be a significant departure from these carefully crafted and effective basin specific GWA regulations.

b. Amended Rule 318A.e(4) changed the requirement to test one well per section prior to drilling only, to a new requirement to test one well in each quarter section (4 wells per section) with both a pre-drilling sample and a post-drilling sample. Rule 318A.e(4) will eventually result in the vast majority of the 11,600 governmental quarter sections that comprise GWA being tested. More testing will occur in GWA than in any other area of the state due to the 34,000 water wells available for testing. The increase in sampling from one per section to four per section supports the COGCC's objectives to evaluate the groundwater conditions within GWA on a broad, area-wide scale. Rule 318A.e(4) balances the need for a meaningful water-testing regime with the regulatory burden that comprehensive testing creates in such a prolific area of industrial, agricultural, and other activities.

c. To address the issue directly, the question that has been asked repeatedly is WHY NOT TEST 4 WELLS PER HALF-MILE IF INDUSTRY CAN HAVE FURTHER ASSURANCES OF THE WATER QUALITY PRIOR TO DRILLING?

- The perception may be that the more data, the better. However, while Rule 609 seeks to establish baseline groundwater quality, well tests in the GWA will not reflect a true baseline. Rather, at best, it will show only a snapshot in time of the highly variable existing water quality across the DJ Basin based on historic activity and natural fluctuations in hydrology. For example, as already discussed, the DJ Basin and specifically GWA has been an active oil and gas development area for over 30 years and is a central industrial and agricultural core area in Colorado. "Baseline" conditions no longer exist. In addition, the geologic and hydrologic conditions in the DJ Basin, especially shallow coal stringers and organic-enriched shale layers result in naturally-occurring methane in groundwater throughout the DJ Basin.

- Testing 4 wells per section with one pre-drilling sample and one post-drilling sample will, over time, lead to the groundwater sampling of a majority of the 11,600 quarter sections in GWA. Any increase in testing over this amount will result in numerous data points with limited value due to the variable water quality that already exists in GWA. HB 1316 does not meet the cost-benefit test that all regulations in Colorado must satisfy. That is why, instead of additional testing, it is important to focus on other COGCC rules that groundwater sampling supplements:
  - Rule 317 (surface casing, well cementing and ongoing pressure testing),
  - Rule 317A (public water supply area protection)
  - Rule 326 (mechanical integrity testing)
  - Rule 904 (pit construction and lining)
  - New Rule 604 (production facility secondary containment).
  - Rule 303 (surface disturbance requirements and conditions of approval),
  - Rule 207 (COGCC authority to mandate additional testing in response to spills, releases and complaints).

Again, it is important not to lose sight of the unique conditions in GWA – the combination of energy development, agriculture, and other industrial and residential uses unique to the area – that have driven their own set of rules and regulations for almost three decades.

3. A final consideration is that, in addition to the increased groundwater sampling requirements in GWA, any water well owner can contact the COGCC and request water well testing if they believe their water quality has been impacted by oil and gas development. Weld County has also instituted free water well testing on request.

To conclude, COGA specifically requests that the COGCC be allowed to carry out its rulemaking function, which mandates compliance with new Rule 609 and amended Rule 318A.e(4) when they go into effect on May 1, 2013. It would be premature to overturn the GWA groundwater testing rule before its effectiveness can be assessed based on results.

Thank you for the opportunity to speak on HB 1316 today and I welcome any questions that you may have.